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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	RM 9101
	)	
	)	

REPLY OF U S WEST, INC.

I. INTRODUCTION AND SUMMARY

U S WEST, Inc. ("U S WEST") supports those commentors that oppose the requests for relief requested by LCI International Telecom Corp. and Competitive Telecommunications Association ("Joint Petitioners") in their Petition for Expedited Rulemaking ("Petition") filed on May 30, 1997 with the Federal Communications Commission ("Commission").[1] Like those opposing the Petition, U S WEST agrees that the subject matter of the Petition is best left to the private negotiation and state arbitration processes, wherein the Commission's access to unbundled network elements ("UNE") requirements are currently being fleshed out and worked towards

[1] Petition for Expedited Rulemaking filed May 30, 1997. And see Public Notice, Comments Requested On Petition For Expedited Rulemaking To Establish Reporting Requirements And Performance And Technical Standards For Operations Support Systems, RM 9101, DA 97-1211, rel. June 10, 1997. Those opposing the Petition include all of the Regional Bell Operating Companies ("RBOC"); Aliant Communications Co. ("Aliant"); GTE Service Corporation ("GTE"); Independent Telephone & Telecommunications Alliance ("ITTA"); Southern New England Telephone Company ("SNET"); and the United States Telephone Association ("USTA"). Comments were filed July 10, 1997.

ultimate implementation.

U S WEST appreciates the criticality of access to Operational Support Systems ("OSS") to the success of new entrants. Indeed, such access is critical not only to those entering through a resale or UNE vehicle, but to facilities-based carriers as well.[2]

The access required by the statute, however, is clear – it is parity of access, not a fundamentally or substantially different or superior type of access. Particularly in light of the recent Eighth Circuit opinion,[3] if there were any prior misunderstanding, it is now patently clear that OSS access need not meet the idiosyncratic needs of individual carriers and that those seeking access might well find themselves accessing OSSs with different (but nondiscriminatory) performance standards. The "performance" of the particular OSSs themselves is a matter of actual fact – not the matter of benchmarks or stretch objectives.

Provided the CLECs can accomplish their necessary tasks and secure necessary information in a manner that is nondiscriminatory *vis-a-vis* the ILECs and other CLECs accessing that ILEC's OSSs, the requirements of the statute have

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[2] As U S WEST noted in our opening Opposition, and as is noted by some commentors, access to OSSs are as critical to facilities-based providers as to other competitive local exchange carriers ("CLEC"). See Opposition of U S WEST at 20-21; Teleport Communications Group Inc. ("TCG") at 1; Time Warner Communications Holdings Inc. ("Time Warner") at 14-15. The particular needs of such carriers might suggest a different type of access interface or interconnections with different systems, and independent local exchange carriers ("ILEC") must be cognizant of working toward parity of access in this context, as well.

[3] Iowa Utilities Board, et al. v. FCC, No. 96-3321 (8th Cir.) Opinion filed July 18, 1997.

been met. Neither "commercially reasonable"[4] nor similar OSSs across various local exchange carriers ("LEC"),[5] nor superior access or performance are required.

Anything more than the reporting of actual, factual, performance of ILECs' systems is both unnecessary and inappropriate.[6] Reported performance (where "performance" capabilities actually exist, see discussion below) sets the appropriate foundation for a determination as to whether discrimination is occurring.[7] If it is,

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[4] AT&T Corp. ("AT&T") often combines this phrase with its reference to "nondiscriminatory" access. AT&T at iii, v, 3, 14. As a matter of statutory construction, however, it is not correct to append the latter with the former. U S WEST is not taking the position that commercially reasonable access is necessarily different from nondiscriminatory access, just that there is probably a broad range of opinions on what would constitute "commercially reasonable" access in any particular context. Since the statute does not use the phrase, its use in the current context overstates the actual legal obligation and simply provides fodder for contention, rather than collaboration.

[5] Telco Communications Group, Inc. ("Telco") argues that only if all LECs are using similar OSSs and thereby providing similar levels of access can a single nationwide standard truly measure whether a single ILEC is discriminating against its competitors. Telco at iv, 11-12. Compare to the same effect, US ONE Communications Corporation ("US ONE") at 4-9. The Eighth Circuit Opinion makes clear that such is not compelled by the Act.

[6] The Association for Local Telecommunications Services ("ALTS") and Telecommunications Resellers Association ("TRA") attempt to craft the Petition's primary objective as being merely the collection and reporting of data. ALTS at 12; TRA at 6-7. U S WEST, as well as other commentors, obviously disagree. The Petition seeks the establishment of performance requirements and mandates. That is a far cry from the mere collection of data. Indeed, just pages later the ALTS acknowledges this stating that the crafting of performance standards builds upon performance measurements as proposed by the Joint Petitioners and the ALTS. ALTS at 13-14.

[7] As U S WEST stated in our Opposition (at 8-9, 22), we do not see it as being necessary for the information to be reported to a regulatory agency – either state or federal. It seems sufficient that an ILEC be willing to report whatever information there is available (which might not be all information, as discussed below) in a format that is meaningful to any CLEC that requests the information. And see Sprint Corporation ("Sprint") at 9-10.

remedies can be crafted – directed and targeted to the discrimination itself – by the states implementing the Commission's rules through arbitrations and enforcement actions.[8]

Something that might get lost in the pages of commentary, but which is important to keep in mind, is that what some commentors contend is a "refusal" by ILECs to provide internal performance measurements is really due to the fact that such measurements do not exist, and – therefore – cannot be provided.[9] GTE notes, correctly, that ILEC "performance" measurements have generally been set by state commissions with an outward-end user perspective, i.e., calls answered in so many minutes, numbers of times due dates met versus missed, etc.[10] While some commentors obviously believe that reports based on this historical methodology are

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[8] Those supporting the Petition continue to press arguments that suffer from the logical infirmity that the "evil" being identified and attacked is the failure of ILECs to provide certain "information" that is deemed relevant (Petition at i, 7; U S WEST Opposition at 7-8; AT&T at 7-11), while the remedies requested go far beyond merely the provision of the information and extend to the creation and establishment of mandatory, operational OSSs performance measurements (Petition at 88 and Appendices A and B; U S WEST Opposition at 10-11; AT&T at 21-25; Kansas City Fibernet, Inc. and Focal Communications Corporation ("Focal") at 4-5).

Furthermore, even when addressing the matter of "reporting," some commentors, like Excel Communications, Inc. ("Excel"), believe the reporting obligation extends to things beyond just facts, such as "internally-developed materials that are descriptive of how the OSS processes are administered by the ILEC." Excel at 1. Such information need not be made available, and generally is not the type of information that the Commission requires with respect to reporting requirements. U S WEST sees nothing to be gained by the general provision of such information across the ILEC industry. Should a specific complaint be filed against an individual ILEC, of course, this kind of information can be requested as a part of the discovery process.

[9] U S WEST Opposition at 8 n.18.

insufficient or inappropriate,[11] it is often the only current "performance" methodology that exists.

Internal OSS metrics have not generally been generated or tracked. Therefore, with respect to reporting out such metric information, it would generally be impossible to provide "historical information" from this perspective, as Sprint and MCI, for example, suggest they want.[12] Furthermore, GTE is correct that the methodology of measuring internal OSS metrics and how the measurements will be reported is currently being negotiated and/or required in arbitrations.[13]

What is clearly not needed as the ILECs move through this change in measurement methodology is an additional regulatory proceeding looking toward "definition and standardization" of ILEC systems.[14] Clearly, the establishment of uniform "performance standards" or "national standards" for access to the OSSs themselves, given their variety not just within an ILEC but across ILECs,[15] is not

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[10] GTE at 11-15.

[11] AT&T at 2; Competitive Telecommunication Association ("CompTel") at 5; MCI at 6.

[12] Sprint at 10; MCI Telecommunications Corporation ("MCI") at 6-8.

[13] GTE at 14-15.

[14] This is what is espoused by ACSI as being the appropriate steps, as well as the creation of new systems which will enable CLECs to monitor ILEC performance. American Communications Services, Inc. ("ACSI") at 6-8. See also Excel at 13-16; Telco at 11-12; US ONE at 4-9; WinStar Communications, Inc. ("WinStar") at 9-10; WorldCom, Inc. ("WorldCom") at 14-15.

[15] The ALTS supports the Petition in part because it is grounded in a sound statistical approach that is resistant to manipulation and can be easily implemented on a uniform basis. ALTS at 5-6. Compare AT&T at 25-28. The ALTS ignores the fact that each ILEC's OSSs are designed to interact with other OSSs, in order to operate as a "system" within the ILEC itself. There is nothing

mandated by the Act. While it is clear from already-filed representations that there is a commercial interest in pursuing such standards (obviously, the more mechanization, the lower the cost),[16] the pursuit of standards should be left to the business judgment of the companies seeking to create the OSS access and the expertise of standards bodies.

One area that begs for further discussion, however, is the suggestion of certain commentors (which the Commission itself has represented as a possibility)[17] that the Commission establish certain OSS performance standards not because

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about the design or the operation that suggests that as between ILECs their OSSs would report out similar statistics or would be uniform in performance. Indeed, later the ALTS acknowledges these systemic differences, suggesting that ILEC deviations from some sort of regulatory norm or acknowledged industry standard would result in an ILEC being compelled to "upgrade" their systems access.

[16] Accord MCI at 14-15; Sprint at 4-5. But see GST Telecom, Inc. ("GST") which argues that ILECs have no incentive to support national standards since the lack of such standards raises CLECs' costs and thereby discourages new entry. GST at 9-13. This is the kind of remark that one is not surprised to find in a new entrant pleading. However, it is usually offered (as here) without any factual support. And, while it might be factually true that different systems increase new entrant costs, the conclusion that ILECs, therefore, have no incentive to standardize at some level is not a conclusion that is compelled by the recited fact. Indeed, as U S WEST has already pointed out, there are business reasons why an ILEC might well want to get to a high level of mechanization with respect to third-party access to OSSs. U S WEST Opposition at 9 n.20. Compare Aliant at 4 (it would be foolish for an ILEC to maintain antiquated systems if the ILEC itself could realize cost savings from accommodating newer technology or established standards). Furthermore, ILECs in one territory are going to be "new entrants" in another (either through their primary business operations or their affiliations. For example, U S WEST includes a facilities-based CLEC operation that is as affected as any other new entrant by the different ILECs' OSSs.). Certainly this fact would reasonably suggest that the ILEC "new entrant" would be interested in decreasing its costs in that situation.

[17] See generally, Memorandum of FCC as Amicus Curiae, District Court for the Southern District of Iowa Central Division, Civil Action No. 4-97-CV-70082, filed June 18, 1997.

such standards are required to be in compliance with Section 251 but because the establishment of such standards are so inherently a good idea that they should be formulated and used in the context of a Section 271 proceeding. Many commentors press arguments similar to the ALTS that established performance standards could constitute a "safe harbor," compliance with which would give an RBOC credit in a Section 271 proceeding; non-compliance would require an upgrade of some sort in order to successfully qualify for Section 271 relief.[18]

Section 271, like Section 251, requires "nondiscrimination" with respect to access to UNEs. Thus, it is difficult to understand how Section 271 could be read to require anything more than Section 251, which the Eighth Circuit construed as meaning parity. Indeed, since the Commission is not lawfully entitled to "add" items to the checklist, the current suggestion that the bar can be raised with respect to OSS access in a Section 271 proceeding is both pernicious and imprudent.

As stated above, U S WEST appreciates the critical importance of OSS access to new entrants serving local exchange markets. However, as many commentors and the Eighth Circuit have echoed, parity of access is what the statute requires and nothing more. This requirement does not provide any support for the adoption of national performance standards as Joint Petitions imply. Quite the contrary, parity is something that is determined on an individual ILEC basis. As such, a rulemaking addressing the issue of OSS performance standards is unnecessary and would do nothing to satisfy the statute's parity requirement. In our initial

[18] See, e.g., ALTS at ii, 12-15; WorldCom at 12-13; Telco at 4-6.

Opposition,[19] and as noted above,[20] U S WEST pointed out that parity of access, or lack of parity, can be best demonstrated by reporting directly to affected parties (i.e., CLECs). U S WEST is currently developing reports which will do exactly that. These reports should allow individual CLECs to determine whether the OSS access that they are receiving is equivalent to that which U S WEST provides itself.

To paraphrase an old saying, "all parity is local." Neither national performance standards nor national reports will ensure that a CLEC is not discriminated against at the local level. However, the reports which U S WEST intends to share with CLECs will allow them to determine whether they are receiving equivalent access to OSSs.

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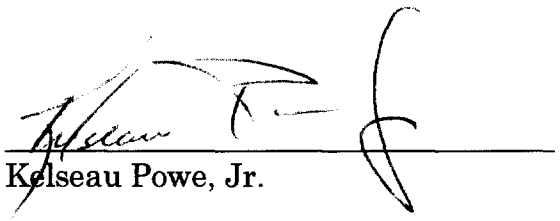
July 30, 1997

[19] U S WEST Opposition at 8-9.

[20] See note 7, supra.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 30th day of July, 1997, I have caused a copy of the foregoing **REPLY OF U S WEST, INC.** to be served via first-class U.S. Mail, postage prepaid, upon the persons listed on the attached service list.



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